



POLICE DEPARTMENT

March 28, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael V. Lopresti
Tax Registry No. 919318
Narcotics Borough Staten Island
Disciplinary Case No. 2010-1989

The above-named member of the Department appeared before me on December 16, 2010, charged with the following:

1. Said Detective Michael Lopresti, while on duty and assigned to Narcotics Borough Staten Island, on or about January 30, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective wrongfully caused an inaccurate instrument to be filed with the Richmond County District Attorney's Office.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT GENERAL REGULATIONS

The Department was represented by Mark Berger, Esq., Department Advocate's Office and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

COURTESY • PROFESSIONALISM • RESPECT

DETECTIVE MICHAEL V. LOPRESTI

EVIDENCE IN MITIGATION

The Respondent after pleading Guilty to the aforementioned charge gave testimony to explain what occurred on January 30, 2009

The Respondent is a Detective assigned to Narcotics Borough Staten Island. He told this Court that on January 30, 2009, he was executing search warrants on two apartments, [REDACTED], located at [REDACTED]. The apartments were located one flight of stairs from each other and at opposite ends of the hall. He noted that a decision was made to execute both of these warrants simultaneously because they did not want to go into only one and have individuals in the second one become aware of the police presence in the building.

The Respondent headed a team of 20 members for both warrants and he decided to execute the warrant for apartment [REDACTED] because he believed that a firearm was located there. His assignment was "to do bunker" which meant he was the first one to enter the apartment. He was also the arresting officer for the entire operation.

The Respondent was in [REDACTED] for about 10 to 15 minutes, where he recovered crack cocaine. He then went to apartment [REDACTED] and when he arrived he observed people in handcuffs.

The Respondent had assigned Detective Sposito to be his "eyes and ears" for 5H. Sposito told him of the "placement of the people" when he and other officers entered 5H. While the Respondent saw the individuals from [REDACTED], he did not actually see them as they were positioned in [REDACTED]. He saw them as they were being brought down from that apartment. The Respondent also noted a member of the Department Police Administrative Aide Margaret Marsala, was also in [REDACTED]. The Respondent did search [REDACTED].

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and recovered a substantial amount of crack cocaine and he processed a total of 12 arrests later that day. While processing the arrests, the Respondent needed Sposito to tell him where the individuals were located in [REDACTED] because he needed that information for the Assistant District Attorney (ADA) when it was time to draft the criminal complaint.

At the time the criminal complaint was drafted [Department's Exhibit (DX A)] and based on the information he gave the ADA one portion of the complaint read "Deponent [Respondent] further states that he observed defendant Leo Hall and Tamara Hall inside of bedroom one, defendant Marsala inside of bedroom two, and defendants Rosario and Fowler at the entryway of said location." The Respondent admitted that he did not see these individuals in apartment [REDACTED] as stated in the complaint. He stated that when he was with the ADA he was reading from his notes and read the entry with the information that Sposito gave him without attributing the information to him. He admitted that what he should have told the ADA was that he was "informed by Sposito" of where those individuals were, but failed to do so. The Respondent stated that this is frequently done but because he was reading their placements from his notes he failed to add the "informed by" to his information. He added that he missed the error when he reviewed and signed the complaints because he was reading the two complaints (for each apartment) (DX A and B) at the same time and failed to notice the mistake.

At one point the case was dismissed – not through any fault of the Respondent. He was never called to testify in that case or given any other information. He was, however, called to the Department Advocate's office, approximately one year later, to discuss the Department's case against Marsala. It was while doing trial preparation that

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he candidly gave the facts of the case to the Advocate and it was then that the error in the complaint was discovered and brought to the attention of the Department

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on April 15, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

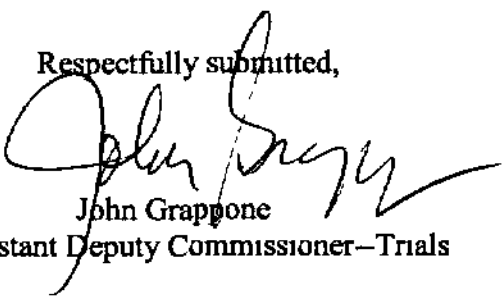
The Respondent, through his plea of guilty to the single charge, has been found Guilty of wrongfully causing an inaccurate instrument to be filed with the Richmond County District Attorney's Office. By his own admissions, this misconduct came about because he failed to inform the ADA that it was Sposito who actually saw where the individuals were in apartment [REDACTED]. While this misinformation can have a detrimental effect on the viability of the case, fortunately, it did not in this case. The fact that the case was not affected by his error does not alone mitigate his error. This Court, however, does look at the fact that he was in charge of a highly dangerous situation where he and his officers executed two search warrants at the same time, where he expected a gun to be in one of the premises. He also handled the processing of the evidence and reported to the ADA to draft the complaint. It should also be noted that, to the Respondent's credit, he was the one who pointed out the error to the Department Advocate when he could have just ignored what would have most likely gone undiscovered.

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The Department has recommended as a penalty a forfeiture of 30 vacation days. But given that there was no intent to deceive and considering the circumstances that he was operating under, this Court finds that a penalty of 30 days is too harsh.

Accordingly, this Court recommends that the Respondent forfeits a penalty of 20 vacation days

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner—Trials


APPROVED
AUG 24 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

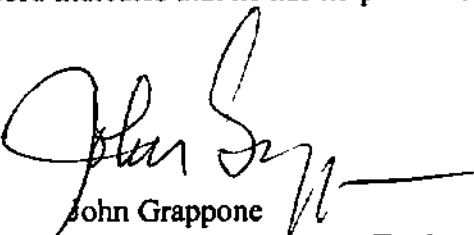
From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
DETECTIVE MICHAEL V LOPRESTI
TAX REGISTRY NO 919318
DISCIPLINARY CASE NO 2010-1989

The Respondent received ratings of 4 5 "Highly Competent, on each of the last three performance evaluations contained in his personnel file

The Respondent has been awarded nine Excellent Police Duty medals and one Meritorious Police Duty Medal

The Respondent's disciplinary record indicates that he has no prior charges and specifications

For your consideration


John Grappone
Assistant Deputy Commissioner-Trials